

REMARKS

The indication by the Examiner that claim 9 would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims is noted with appreciation.

As suggested by the Examiner, claims 1-8 and 10 have been amended to incorporate the limitations of claim 9; claim 9 has been canceled without prejudice to expedite prosecution of this application. Each of the amendments to the claims is clearly supported by the original specification.

Claims 7, 8 and 10 were rejected under 35 USC 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 7, the Examiner has alleged that the term “conical depression” lacks proper antecedent basis. Applicant respectfully traverses this argument. Claim 7 calls for “A pool cover drain as recited by claim 1, wherein the said depression creation means for creating a conical depression in said pool cover to direct rain water to said pool cover drain comprises a sealed weighted tubular element with its weighted end placed in proximity with said pool cover drain”. Therefore, the term “conical depression” is not referring back to an earlier disclosure of this term, but rather the term is properly being set forth for the first time by using the participle “a” before the term, not “the” or “said”. Therefore, it is submitted that claim 7 has proper antecedent basis.

Regarding claim 8, the Examiner has stated that the term “weighted end” lacks proper antecedent basis. In order to overcome this rejection, claim 8 has been amended to depend from claim 7, instead of claim 1. Because claim 7 properly sets forth the term

“weighted end”, it is submitted that the same term found in claim 8 now has proper antecedent basis.

Regarding claim 10, the Examiner has stated that the term “said right angled projections” lacks proper antecedent basis. It is submitted that in view of the amendments to claim 1, from which claim 10 depends, this rejection has been obviated. More particularly, claim 1, as amended, properly sets forth the term “right angled projections”. Because claim 10 depends from claim 1, it is submitted that the same term, found in claim 10, now has proper antecedent basis.

In light of the remarks set forth above, it is submitted that claims 7, 8 and 10, as amended, have proper antecedent basis. Accordingly, reconsideration of the rejection of claims 7, 8 and 10 under 35 USC 112, second paragraph, is respectfully requested.

In view of the amendments to claims 1-8 and 10, it is submitted that the objections and requirements of the Examiner have been complied with; reconsideration thereof is respectfully requested.

Claim 1, as amended, discloses a pool cover drain for an above ground swimming pool, comprising: (a) a pool cover placed over said above ground swimming pool having disposed in a non-centric portion thereof a sealed, watertight pool cover drain; (b) attachment means for connecting a flexible hose to said pool cover drain and to a side wall drain in said swimming pool, for draining collected rainwater away from said pool cover; (c) sealed, weighted tubular element means disposed on said pool cover adjacent said water tight pool cover drain, for creating a depression in said pool cover with a low point contiguous to said pool cover drain to thereby direct collected rainwater on said pool cover along outside portions of said element means and into said pool cover drain;

and (d) said sealed, weighted tubular element comprising right angled weighted projections in one end to prevent rolling and displacement of said sealed weighted element over said pool cover. It is respectfully submitted that, as amended, claim 1, as well as claims 2-8 and 10, dependent thereon, patentably define over the art applied.

RESPONSE TO RESTRICTION REQUIREMENT

The Examiner has required restriction under 35 U.S.C. § 121 between the following inventions:

Group I. Claims 1-10, drawn to a pool cover drain, classified in class 4, subclass 498; and

Group II. Claim 11, drawn to a method for draining rainwater, classified in class 4, subclass 661.

In response to the restriction requirement, applicant elects, with traverse, the invention of Group I, claims 1-10 for further prosecution on the merits.

Reconsideration of this restriction requirement is respectfully requested. The Examiner has stated that the inventions, as grouped, are distinct because the inventions defined by Groups II and I, respectively, are related as process and apparatus for its practice. The Examiner has argued that the inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). The Examiner has argued that in this case “the article could be used absent the clause (c) step of claim 11 and in the absence [of] the [clause (e) step of claim 11 directed to the] rainwater route through the exterior portions of the tubular element”.

Applicant submits that even assuming arguendo that the article could be used absent the clause (c) step of claim 11, “placing the cover, together with said pool cover

drain and said flexible hose attachment, over each side of said above ground swimming pool”, the article would nevertheless be used with a similar reservoir-type structure, and thus such a modification would not be considered to result in a materially different apparatus or a materially different process under MPEP § 806.05(e). Furthermore, element (e) of the claimed method calls for “draining said collected rainwater from said pool cover drain to said sidewall drain outlet through a flexible hose”. This feature of draining the rainwater through a flexible hose and out of a sidewall drain is essential to the present invention. Therefore, applicant submits that it would be unreasonable to suggest that the method could be practiced without element (e) of claim 11, which is presumably what the Examiner has suggested. Moreover, even assuming *arguendo* that the article could be used absent the clause (e) step of claim 11, the rainwater would still be drained through a flexible hose to some location, and thus such a modification would not be considered to result in a materially different apparatus or a materially different process under MPEP § 806.05(e).

Additionally, the relationship between (i) the pool cover drain apparatus, and (ii) the method for using the apparatus for draining rainwater, is an interdependent one, there being the same physical and structural concepts in the broad aspect of the invention.

Moreover, draining rainwater from a pool cover through the use of the combination of structural features called for by claims 1 and 11 is a novel feature, which is shared by each of the inventions of Groups I and II.


It is well established that applicants should be allowed reasonable latitude in claiming their invention, provided they do not unduly multiply the claims, which is not the case here. Ex parte Seiback 151 U.S.P.Q. 62. It is submitted that the fields of search involved in examining the claims as grouped would, as a practical matter, be essentially co-extensive and the best interests of the public would be served by having all of the claimed subject matter in the same application.

Accordingly, reconsideration of the restriction requirement is respectfully requested.

CONCLUSION

In view of the amendments to the claims, the elections taken herein and the remarks set forth above, it is respectfully submitted that the present application is in allowable condition. Reconsideration of the rejection of claims 1-8 and 10, as amended, and their allowance are earnestly solicited.

Respectfully submitted,
Eric Stanneck

By 
Ernest D. Buff
(His Attorney)
Reg. No. 25,833
(908) 901-0220